



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FF

Introduction

This hearing dealt with an application by the landlord seeking an early end of tenancy and for an order of possession. Both parties participated in the conference call hearing. Both parties gave affirmed evidence.

Issues to be Decided

Is the landlord entitled to an early end of tenancy?

Is the landlord entitled to an order of possession?

Background and Evidence

The tenancy began on or about September 21, 2012. Rent in the amount of \$1050.00 is payable in advance on the first day of each month. At the outset of the tenancy the landlord collected from the tenant a security deposit in the amount of \$525.00.

The landlord gave the following testimony; the tenant has become abusive towards the landlord and the upstairs tenant's, the landlord is fearful of the tenant and the tenant's daughter and her boyfriend, the landlord was advised that on November 24, 2012 the tenant's daughter stabbed her boyfriend in the nearby vicinity of the subject property, the landlord issued a One Month Notice to End Tenancy for Cause the following day, the landlord is concerned due to the tenant's daughters violent behaviour and for the safety of the tenants upstairs, the landlord also is concerned that the tenant's daughter was smoking marijuana in the unit and that she was living there without the landlords approval, the landlord is seeking to end the tenancy and obtain an order of possession.

The tenant gave the following testimony; adamantly denies any marijuana or even cigarettes are smoked in or on the subject property, her daughter was not living in the home but was just visiting, her daughter has her own place and is on a lease, the incident of November 24, 2012 did not occur on the subject property and did not involve the subject tenant, the incident took place down the block about six houses over, her daughter was defending herself as her boyfriend was “beating her up”, her daughter’s boyfriend is the subject of a “no contact” with the tenants family and a “no go” to the subject property, this is the “one and only problem” and did not involve the subject tenant, wishes to remain as a tenant.

Analysis

As explained to the parties during the hearing, the onus or burden of proof is on the party making the claim. In this case, the landlord must prove their claim. When one party provides evidence of the facts in one way, and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails. All documentary evidence and testimony was considered when making a decision.

The relationship between these two parties is an acrimonious one. Both parties were cautioned numerous times about their behaviour and demeanour during the hearing. At times the parties were in a highly charged screaming match with each making allegations of “liar “to each other. The parties were more intent on arguing with each other than answering questions or presenting their claim.

It is apparent from the testimony of the landlord and the tenant that there are issues between them. Section 56 of the Act uses language which is strongly written and it’s written that way for a reason. A person cannot be evicted simply because another occupant has been disturbed or interfered with, they must have been **unreasonably** disturbed, or **seriously** interfered with. Similarly the landlord must show that a tenant has **seriously** jeopardized the health or safety or lawful right or interest of the landlord

or another occupant, or put the landlord's property at significant risk or that it's **unfair** to the landlord or other occupants to wait for a Notice to End Tenancy for Cause.

Although the events of November 24, 2012 are disturbing, they did not occur in or on the subject property or involve the upstairs tenants or the landlord. In addition there has not been any further incident since that day. I accept that the upstairs tenants and the landlord were upset about the events of that day however it is not sufficient grounds to have the tenancy end early. The issue of that day as testified by both parties involved two individuals who do not live on the property and which occurred off of the property. Although they were guests of the tenant, the tenant could not have reasonably foreseen this occurring. The tenant has sought legal counsel and recourse to address the issue by having the "boyfriend" the subject of a "no go and a no contact order".

The landlord requested on several occasions that I make inquiries with the local police and to contact the investigating officers. I explained that my role is not one of investigation and that any of the information she wanted me to consider had to be submitted for this hearing to myself and the tenant and brought forward by her as the applicant. She indicated she understood.

Based on the above, I am not satisfied that the landlord has proved its case and is not entitled to an order of possession.

The tenancy remains in effect.

Conclusion

The landlord's application is dismissed.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: December 18, 2012.

Residential Tenancy Branch